

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)
)
Closed Captioning and Video Description)
of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

MM Docket 95-176

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LEAGUE FOR THE HARD OF HEARING

Response to
Notice of Proposed Rulemaking

Adopted: January 9, 1997; Released January 17, 1997

February, 1997

To the Commission:

The League for the Hard of Hearing (the League) is writing in response to the Federal Communications Commission's (the Commission) request for comments in the "Notice of Proposed Rulemaking", in the above captioned proceeding, released January 17, 1997.

The League did submit comments to the Commission's Notice of Inquiry released December 4, 1995 and again wishes to submit comments on this Notice of Proposed Rulemaking. The League is an agency that has been providing services to people who are deaf, deaf-blind, and hard of hearing for the last 87 years. Annually, the League provides services to over 13,000 individuals and their families from all economic, social and ethnic backgrounds. We offer comprehensive programs of diagnostic, rehabilitation, counseling and education programs. We wish to once again offer the Commission our perspective as professionals who work with people who are deaf and hard of hearing, and to advocate on their behalf.

The Commission seeks comments on proposed regulations regarding video programming accessibility, specifically regarding:

- responsibility for compliance with captioning requirements;
- transition schedule;
- exemptions based on economic burden;
- exemptions based on existing contracts;
- exemptions based on undue burden;
- standards for quality and accuracy; and
- the enforcement process.

The League wishes to respond to the following:

Section II. Background

A. Scope of Section 713, paragraph # 5

The Commission indicates that “the provisions of Section 713 apply to all types of video programming delivered electronically to consumers, regardless of the entity that provides the programming or the category of programming” and names a number of distribution technologies used to deliver programming to consumers as covered under this Act. However, the Commission makes no mention of video programming delivered via the Internet. It is the League’s understanding that video programming will soon be easily available simply by downloading via a phone line and cable modem. We believe that the Commission should take steps to ensure that providers who deliver programming via the Internet are included among providers covered by this notice.

E. Methods of Closed Captioning, paragraph # 22

While the Commission is correct in noting that reformatting a video presents additional costs beyond the initial cost of captioning, the League wishes to emphasize to the Commission that reformatting costs substantially less than the original cost of captioning, sometimes as low as \$100 per hour. We have heard reports from consumers who find it frustrating when they find that a captioned video that they know is available at a video store is being broadcast without captions. No one would suggest that the audio portion of the program be stripped simply because it needs to be edited for commercial breaks. Likewise, the captions must be considered an intrinsic part of the program, essential to its viewers. The consumer who cannot otherwise have access to that video cannot see it otherwise.

Section III. Closed Captioning Requirements

A. Responsibility for Captioning, subsection 2, paragraph # 28, #30

The League supports the Commission's proposal that the responsibility for compliance with the closed captioning requirements should be placed on video programming providers. It is appropriate for responsibility to rest with providers, for the reasons the Commission states (their direct link with consumers and their role in the purchasing of programming from producers). We also agree with the Commission that the ultimate responsibility must rest with one entity. However, as the Commission notes, the actual captioning should most properly be handled by the original program producers to assure efficiency, accuracy, and avoid duplication of efforts that could occur with multiple distributors. Such details would most properly be worked out in contractual agreements between the providers and the producers.

B. Obligations as to Non-Exempt Programming - Transition Rules for New Programming, subsection 2, paragraph # 41

The League strongly objects to a transition schedule of eight years that will phase-in all non-exempt new programming by requiring an additional 25% every two years.

Captioning is not simply a "frill", providing entertainment to a group that has been shut off from such entertainment. People who are deaf and hard of hearing often have no other access to broadcast emergency information, educational information, cultural information, as well as providing access to society at large. Captioning is occurring with greater and greater frequency, is more and more accepted. We appreciate the Commission's concerns regarding immediate implementation of captioning both in terms of available captioners and costs; however, it is our understanding that a more rapid phase-in could be handled by captioning agencies and that captioning has become a very price sensitive commodity in recent years, and prices are likely to drop even further.

Additionally, some providers currently produce captioning well over the 25% mark that the Commission is suggesting for the first year. Would this rule mean that providers who have been captioning over 25% may now backtrack, producing less, not more than they now do? The technology is in place now. The doors have been thrown open to greater access for this community of Americans who have not had access before. To provide this option for delay sends out a message to providers that the Commission views retreat as acceptable, a message that approves closing the door once again for some 28 million people. Consumers who are deaf and hard of hearing find this an unacceptable option.

We respectfully suggest the Commission consider instead a transition schedule of **four** years that will phase in captioning of all non-exempt new programming by requiring an additional 25% **over and above that percentage of programming which is being captioned this year.**

B. Obligations as to Non-Exempt Programming - Transition Rules for New Programming, subsection 2, paragraph # 42

The Commission proposes to allow program providers significant discretion regarding what will be captioned to meet the requirements. Such discretion will most probably result in the most watched, highest rated, most fully funded programs being captioned first.

We agree with the Commission's analysis that market forces alone may not be sufficient to ensure that the closed captioning of some of the public interest programming. We understand that captioning of such programming as lower rated news, public affairs, educational and children's programming, as well as programs funded by taxpayers and programs which cover governmental activities (such as Federal, state and local legislative and school board sessions) have a greater public interest value, therefore, a greater need to be accessible to all citizens, even if their ratings are significantly lower.

We suggest that the Commission consider issuing rules to provide educational and public interest programming to be captioned as a separate category of non-exempt new programming to be phased in over the four year transition period, so that 25% of all such programming above and beyond currently captioned programming would be captioned the first year, 50% in year two, 75% in year three and 100% in year four. All other programming would be phased-in over the four year period on the same schedule, but which programming is captioned first would be at the discretion of the program provider.

B. Obligations as to Non-Exempt Programming - Transition Rules for New Programming, subsection 2, paragraph # 47

The Commission seeks comments as to whether previously captioned programs should be required to be transmitted with captions regardless of whether the provider has already met any percentage requirement. We support the Commission's proposal that providers required to transmit such programming with captions. However, the League urges the Commission to require providers to transmit previously captioned programming with captions, regardless of whether the provider chooses to edit and reformat the program or not. It would be wasteful and inefficient to disregard previous efforts to make programs accessible at little additional cost to such a provider. Considering the ultimate goal is to make 100% of new programming captioned, it would not appear to be a great burden for a provider to go somewhat beyond the prescribed percentages during the transition period.

The Commission is properly concerned about the costs of reformatting. However, it must be remembered that, in many instances, the reason the provider is reformatting is to provide time/space for commercial breaks in that program. Certainly, if the provider is concerned about the costs of reformatting a program that has been provided to them with captions, they could seek alternate means of providing that programming, such as

presenting commercials at the beginning and end of the program, thus negating the need to reformat. Additionally, should the provider choose to edit such programming, it is well established that the provider accepts certain costs as being associated with creating those breaks, such as a person to do the editing. Similarly, reformatting, at a fraction of the original cost of captioning, should be viewed as part of the cost of providing commercial breaks, rather than an “additional” cost.

We cannot stress enough the need for equal access for the community of people who are deaf and hard of hearing. It is shameful that valuable and informative programming is still being provided in a way that is not accessible to so many Americans. But it is inexcusable that Americans who are deaf and hard of hearing are excluded from viewing programming that was at one point captioned, especially when such problems are easily avoided.

C. Obligations as to Non-Exempt Programming - Transition Rules for Library Programming, subsection 2, paragraph 58

The League understands the concern of the Commission regarding library programming. Certainly costs of captioning were not considered in original production costs.

Nonetheless, the League must make the assumption that the provider either finds a public interest value in re-broadcast of library programming, or expects some financial gain from the re-broadcast of such programs.

Concerning library programming that has been previously captioned, we must once again emphasize the need for the Commission to require that captioning be considered intrinsic to the program. Regardless of editing or reformatting, regardless of sale of licenses or rights, once a program has been captioned for any venue, those captions are part and parcel of that program. Any provider who needs to edit should be required to reformat the captions provided.

The League agrees with the Commission that previously produced programming that will never be provided to consumers need not be captioned. However, preexisting programming that reaches consumers should be available to all consumers, not only consumers who can hear. There are many older programs that were never captioned simply because the technology was not there, yet has information and value, if it can reach its audience. To exclude people who are deaf and hard of hearing from such programming cuts off people from their history and denies them “maximum access.”

We suggest that owners of library programs be allowed to present such programs for distribution in catalogs that make it clear whether they are captioned or not. Only at the point that such programs are actually picked up by a distributor should the owner be required to provide captions. At that point, part of the distribution contract could concern the costs of captioning, which the parties may work out between them.

The League finds that the goal of 75% of all library programming falls far short of a reasonable goal for such programming. We understand there are additional problems with captioning older programs, and therefore providers may appropriately claim that captioning of certain programming may create an undue burden exemption. The Commission notes that the statute uses the language to “maximize accessibility” in regard to library programming. However, we do believe that in writing that language, Congress intended a blanket exemption of 25% of any and all programming first published prior to the effective date of the Commission’s rules. And we believe that it would not create financial burden for many program providers.

We urge the Commission to consider a goal of **100%** of non-exempt library programming be made available on a transition schedule. Noting that the Commission does not believe immediate or near term captioning of library programming is appropriate, we suggest a **ten year** phase in period, with 20% of non-exempt library programming not now captioned to be captioned in two years, 40% of such programs captioned in four years, 60% captioned in six years, 80% in eight years and 100% in ten years.

D. Exemptions of Classes of Programming and Providers based on Economic Burden, subsection 2, paragraphs #70, #71

The League is well aware that captioning is an expense that many providers have not had to assume up to this time. We are concerned, however, about the numerous exemptions suggested by providers under the rubric of “economic burden.” These exemptions make it appear that providers are simply running for cover and asking the Commission’s blessing. We urge the Commission to make every effort to ensure that the term “economic burden” will not be so expanded to render the goal of making video programming “fully accessible” totally meaningless.

D. Exemptions of Classes of Programming and Providers based on Economic Burden, subsection 2, paragraphs #72-84

72. Foreign Language Programming

Foreign Language Programming should not be exempt. Many captioning agencies employ caption writers who are proficient in other languages. Providing captioning in other languages not only provides consumers who are deaf and hard of hearing who are not native English speakers access to programming, but provides people who hear, but wish to learn another language an opportunity to see the idioms of a language not normally provided in textbooks. Considering all new televisions over 13 inches have the capacity to reveal captions, we believe it would in the public interest to provide captioning that would have such wide reaching benefits.

The Commission accurately states that non Latin alphabets are currently technically unable to be closed captioned. We agree that, for technical reasons, such foreign language programming should be exempt. However, we would suggest to the Commission that this issue be revisited at such time that technology catches up and such languages can be captioned.

73. Programming that is primarily textual in nature.

There are a few cable channels on many systems that are text only. We agree with the Commission that such channels should be exempt. However, if the audio background is necessary for the understanding of the information provided, or if the audio portion is ever interrupted with verbal information that is intended to reach their audience, then that portion of the programming should be captioned.

Our definition of a primarily textual video program is one which, if received with no sound at all, a viewer would easily understand the information presented.

74. Cable access programming

We agree with the Commission that Public, Educational and Governmental (PEG) channels are of a high public interest value. We believe that this type of programming should not be exempt from these rules.

76. Instructional Programming

Instructional programming can be extremely valuable to people who are deaf and hard of hearing. Captioning reinforces English language skills for both children and adults, provides information that could be critical to understanding the lessons, and by its very nature, allows a student to tape and later review the information provided. Also, instructional programming provides a venue which is far better than a classroom for people who are hard of hearing: people who are hard of hearing find the classroom a terribly difficult situation in which to hear and to get all the information because of the usually poor acoustics; and even where assistive listening devices are provided, they have not solved the problem of the student being able to simultaneously hear both instructor and other students who ask questions. Instructional videos can solve those problems, if they are captioned.

Instructional programming is also available to a wide range of viewers: children, young people and adults attempting to gain a GED, and adults taking advantage of telecourses, all of whom need access to such programming. We urge the Commission to take note of the wide range of instructional programming, both pre-recorded and live, and the significant lack of such accessible programming for students who are deaf and hard of hearing. We urge the Commission to make no exemptions for this kind of programming.

80. Political advertising.

We urge the Commission to provide no exemption for political advertising. We agree with the Commission's analysis that "political advertising is important programming in that it provides information about candidates for public office, which is beneficial to persons with hearing disabilities, as it is for all Americans." Our democracy is based on participation of all its citizens, equally and without restrictions. How can people who are hard of hearing and deaf have access to that information, how can they make an informed decision in the voting booth, if they don't at a minimum have equal access to the information that candidates are providing to every other constituent? Additionally, we strongly disagree that captioning of any sort of video programming constitutes censorship based such captioning being a burden that limits the number of advertisements. The cost of captioning an ad is \$200 or less. How can this be construed as an economic burden when it is a minor portion of the overall cost of the ad? Providing access to 28 million Americans is no small portion of citizens who should, by all rights, be very much part of our election process. It would be far worse to shut people out by providing exemptions the result of which would be to prevent hard of hearing and deaf people from gaining information that would allow them to make an informed decision about candidates, information that is provided to all other citizens.

At a minimum, we would urge the Commission to adopt a rule that provides for captioning of any publicly funded political advertising. Legislation introduced in Congress in 1991 by Representative Stenny Hoyer of Maryland stated, "No candidate for the office of President or Vice President may receive amounts from the Presidential Election Campaign Fund under this chapter or chapter 96 [of the Internal Revenue Code of 1986] unless such candidate has certified that any television commercial prepared or distributed by the candidate will be prepared in a manner that contains, is accompanied by or otherwise readily permits closed captioning of the oral content of the commercial..." The League urges the Commission to adopt a similar rule, or alternately, a rule that would provide that all political commercials, regardless of funding source, be required to be captioned.

82. Music Programming

The League urges the Commission to adopt rules that would not allow exemptions for music programming. The record companies have already embraced closed captioning of their music videos, since as early as 1988. Many awards programs which include live performances have been closed captioned for years, including the Grammys, Television and Motion Picture Academy Awards, the Country Music Awards, and the Billboard Music Awards. Not only does this provide the lyrics to people who are hard of hearing and deaf who enjoy music but who have a terrible time deciphering the words, but it also provides benefits to all parents who are concerned about the content of the music their children listen to.

We also urge the Commission not to exempt programming that is primarily instrumental from these rules. Many hard of hearing people have enough residual hearing that they enjoy such programming, and certainly if it is ballet, this includes the full range of people who are hard of hearing and deaf. However, if those programs include introductory background information, that information would be lost to the viewer. Again, if the provider finds the information valuable for their audience, it is valuable for every member of that audience.

83. Weather programming.

We agree with the Commission that weather programming should not be included in your general exemption. Weather announcements often include important information that may not be displayed visually, such as the arrival of a storm that could make driving hazardous.

F. Exemptions Based on the Undue Burden Standard, subsection 2, paragraph 91

The League would urge the Commission to apply the undue burden standard as narrowly as possible under the statute. While the cost of captioning currently spans a wide range and depends on such factors as volume of programming and whether a program is live or recorded, no significant difficulties remain in the production of closed captioning. Closed captioning hardware, software, and services have been widely available in the marketplace since 1980 and there has yet to be a type of programming or situation where captioning has been technically or operationally "significantly difficult" enough to prevent its use. Live programming is commonplace, multiple time-delayed regional networks have been accommodated, local political debates in one state have been closed captioned via satellite and phone from another state and captioning has even been made readily available live on the World Wide Web.

Both consumers and video program providers will be best served if narrowly defined criteria can be drawn so that decisions can be made long in advance of either production or air time. The main factors the Commission proposes for making such determinations (primarily size of production budgets and anticipated ratings or size of audience) would indicate that only a handful of local programs in the smallest of markets would have the ability to declare an undue burden exemption. The League believes that is the proper approach to applying this standard.

G. Standards for Quality and Accuracy, subsection 2, paragraph 110

The League agrees with the Commission that technical issues can and should be addressed by the Commission. We have often heard complaints from consumers about inadequate delivery of captions. Captioning that disappears after a special announcement, captioning that is delivered garbled, captioning that is included in the

programming but not delivered, captioning that is delivered in any way incomplete should not be allowed under these rules.

G. Standards for Quality and Accuracy, subsection 2, paragraph 111

The League understands the Commission's hesitancy in ruling on non-technical aspects of quality and accuracy in the early days of implementation, however, it is our belief that this is an important issue that should be addressed from the start. It should be remembered while it is in the early days of implementation of these rules, closed captioning has been available for nearly 20 years and consumers are well aware of the issues of quality control.

We endorse the guidelines produced by Consumer Action Network and quoted in the NPRM at G. 1.106. These guidelines indicate the problems existing and anticipated as the amount of captions increases for all video venues. If the Commission allows low quality captions, these will become the path that low end captioners will take to reduce cost at the price of creating unreadable, even useless captions. If low quality captioning is allowed to dominate the market, viewers will receive little benefit from this provision of the Telecommunications Act. We urge the Commission to address each of these issues noted by CAN from the beginning of implementation.

G. Standards for Quality and Accuracy, subsection 2, paragraph 118

The League wishes to emphasize to the Commission that marketplace incentives for production of high quality captioning is unlike the marketplace incentives for other products. The people who "use" the captions are not the people who "buy" the captions: consumers cannot choose which captioners will provide the product. Also, most consumers do not know who to call if they experience problems. The practical result of that is the producers never hear their complaints, again reducing the effectiveness of the marketplace in quality control.

The League strongly urges the Commission to address the issue of standards and quality. We understand that the Commission has an aversion to mandated quality control issues at this time. However, for the above stated reasons, we believe it very important that captions are not just delivered technically intact, but also in readable, understandable form.

We would urge the Commission to establish a process and timeline for addressing the problem of quality control.

We also urge the Commission to establish a consumer and industry panel to formulate means of examining quality and to report their findings at the end of each year of implementation. The Commission should not allow the lowest quality captioning to become the industry standard.

IV. Enforcement and Compliance Review Mechanisms, paragraphs #122-124

The League agrees with the Commission that closed captioning requirements that are adopted would best be enforced through existing types of complaint processes, that allow both private parties and government agencies to file complaints with the Commission.

However, we would urge the Commission to modify the process to the extent that it takes into consideration the resources of the consumer in filing such a complaint. We find consumers lack practical access to existing types of complaint processes. Consumers who have complaints rarely know where to go to file such complaints, how to file complaints and what kind of documentation is needed to file complaints. This puts the consumer at a distinct disadvantage.

The League endorses the Commission's proposal to require complainants to first notify the video programming provider before filing with the Commission. However, we would suggest that the Commission take the responsibility of educating the consumer of the proper filing procedure, as we anticipate that the Commission may well to whom consumers turn when they experience problems.

The League urges the Commission to establish a Consumer Advisory and Complaint Board. Such a board could serve both consumers and providers by acting to centralize and coordinate the process of tracing caption problems and tracking compliance. Additionally, it could serve to educate the public regarding what they can expect from providers, captioning, and the complaint process and educate providers as to the needs and concerns of consumers. A toll free number for complaints could also be handled by this Board.

The Board could also serve the Commission by tracking and assuring that re-transmissions of previously captioned programming are delivered with captions.


Similar boards have been established with industry funding. We feel that would be appropriate in this case, as the Board would serve industry's needs for a coherent and effective process for complaint resolution short of the Commission's complaint process.

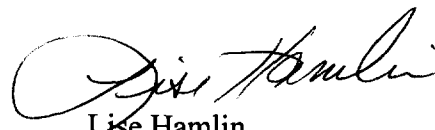
The League for the Hard of Hearing recognizes the complexity of the issues before the Commission. We appreciate that the concerns of providers and producers who are concerned about the expense of providing captions to viewers. However, we are even more concerned with a segment of Americans who are on the verge of being fully included in all aspects of society. It cannot be forgotten that providers of programming are not in this business on a pro bono basis: they are in it to make money and they have been successful at that. It is understandable that they would object to any rise in costs, but providers should be reminded that for many years consumers who are hard of hearing and deaf have been footing the bill for programming, while not having access to the programming. Hard of hearing and deaf consumers have been paying the same cable bill rates, the same premium channel rates, the same satellite access rates as all other Americans. But such programming has not been accessible. The time has come to provide equal access to citizens who are hard of hearing and deaf by providing access to programming that all other citizens take for granted.

The League hopes to someday see quality captions on every broadcast program. In the meantime, we feel that the public interest is best served by the Commission taking a strong stand to see that captions are considered an essential part of any broadcast program.

We hope our comments have been of some help to the Commission in considering the issues at hand.

Respectfully submitted,


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